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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,374	09/25/2001	Shin-Ichi Kanno	214406US2SRD	5919
22850	7590	08/16/2006	EXAMINER	
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SIMITOSKI, MICHAEL J	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/961,374

Applicant(s)

KANNO, SHIN-ICHI

Examiner

Michael J. Simitoski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,4,11,13,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4,11,13,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The response of 6/21/2006 was received and considered.
2. Claims 2, 4, 11, 13 & 21-22 are pending.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 2, 4, 11, 13 & 21-22 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's response (claim amendments) overcome the previous rejections under 35 USC §112 ¶2, set forth in the previous Office Action.
5. Applicant's response argues that the prior art fails to teach or suggest when all the content servers are busy, the reception server estimates a waiting time until an available content server is obtained based on current busy states of the content servers and notifies the client of the estimated time. However, Susai teaches that an interface unit estimates a current response time based on current busy states of the content servers (col. 5, lines 45-53 & col. 6, lines 44-58) and notifies the client of the estimated time (col. 7, lines 43-54) to establish a preferred server (col. 7, lines 52-54) while guaranteeing network response time (col. 4, lines 11-16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brendel such that the reception server/balancer estimates a waiting time until an available content server is obtained based on current busy states of the content server and notifies the client of the estimated time. One of ordinary skill in the art would have been motivated to perform such a modification to establish a preferred server (col. 7, lines 52-54) while guaranteeing network response time, as taught by Susai (col. 4, lines 11-16).

*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 21-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite “wherein the waiting time is estimated using a throughput per unit time from a memory quantity used by the content server whose load is minimum”. No example of this is described in the specification.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite “wherein the waiting time is estimated using a throughput per unit time from a memory quantity used by the content server whose load is minimum”.

- a. However, the limitation “using a throughput per unit time from a memory quantity” is unclear because it is unclear how a memory quantity has throughput. For the purposes of this Office Action, this is assumed to mean “wherein the waiting time is estimated using a memory quantity identifying a throughput per unit time of the content server whose load is the minimum load with respect to the other servers.

b. Further, the limitation “whose load is minimum” is unclear because it is unclear if the server’s load is at a minimum (no load) or is the least of all the servers. For the purposes of this Office Action, the limitation is read similarly to the previous paragraph, where the quantity used is a quantity from a server whose load is the least of all the servers.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2 & 11 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 5,774,660 to Brendel et al. (**Brendel**) in view of U.S. Patent 6,928,545 to Litai et al. (**Litai**) and U.S. Patent 6,725,272 to Susai et al. (**Susai**). Brendel discloses a plurality of content servers/server farm each of which stores the same content (col. 2, lines 53-67) and a reception server/balancer having a first device configured to select one of the content servers based on load conditions thereof (col. 6, lines 20-58), a second device/balancer configured to receive a first access request relating to the order/request from the client (col. 6, lines 43-46), and a third device/balancer configured to issue a permission ticket/HTTP redirect message to the client (col. 21, lines 2-7), wherein the content servers/server farm are unconditional and transmit the content to the client in response to a second access request (reissued request) from the client using the

permission ticket/HTTP redirect message (col. 21, lines 2-7), wherein the permission ticket/HTTP redirect message locates said selected one of content servers on the network (col. 21, lines 2-7). Brendel lacks disclosure that the content servers transmit the content to the client if the client possesses the permission ticket to access the content servers, register information representing that the permission ticket used before that transmission is invalid, and deny the client if the client accesses the content servers but does not possess a permission ticket or said information is registered in the content servers. However, Litai teaches a system where a user requests data (col. 3, lines 39-43), the client is assigned a ticket (col. 4, lines 11-13) where the user is redirected to a content server (col. 4, lines 11-18) where the ticket is validated for access (col. 4, lines 11-18) to enable data mirroring using servers not under direct control of the data owner (col. 1, lines 28-36). Litai further teaches that the server removes the ticket from a ticket pool to allow limited access to the content (col. 4, lines 28-31). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brendel so that the content servers transmit the content to the client if the client possesses the permission ticket to access the content servers, register information representing that the permission ticket used before that transmission is invalid, and deny the client if the client accesses the content servers but does not possess a permission ticket or said information is registered in the content servers. One of ordinary skill in the art would have been motivated to perform such a modification to enable mirroring of content while maintaining access control over the content, as taught by Litai (col. 1, lines 28-36, col. 3, lines 39-43 & col. 4, lines 11-31). As modified, Brendel lacks wherein when the content servers are busy, the reception server/load balancer estimates a waiting time until an available content server is obtained based on current

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busy states of the content servers and notifies the client of the estimated time. However, Susai teaches that an interface unit estimates a current response time based on current busy states of the content servers (col. 5, lines 45-53 & col. 6, lines 44-58) and notifies the client of the estimated time (col. 7, lines 43-54) to establish a preferred server (col. 7, lines 52-54) while guaranteeing network response time (col. 4, lines 11-16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brendel such that the reception server/balancer estimates a waiting time until an available content server is obtained based on current busy states of the content server and notifies the client of the estimated time. One of ordinary skill in the art would have been motivated to perform such a modification to establish a preferred server (col. 7, lines 52-54) while guaranteeing network response time, as taught by Susai (col. 4, lines 11-16).

12. Claims 4 & 13 are rejected under 35 U.S.C. 103(a) as being obvious over **Brendel, Litai & Susai**, as applied to claims 2 & 11 above, in further view of U.S. Patent 6,799,214 to Li. Brendel lacks specifying a time period to control an access using the permission ticket from the client. However, Li teaches that content mirroring sites should assign expiration times to mirrored content to ensure the content does not permanently occupy memory and to provide fixed time periods during each day (col. 12, line 66 – col. 13, line 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brendel to specify a time period/expiration to control an access using the permission ticket from the client. One of ordinary skill in the art would have been motivated to perform such a modification to ensure the content does not permanently occupy memory and to provide fixed time periods during each day, as taught by Li (col. 12, line 66 – col. 13, line 8).

*Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Simitoski whose telephone number is (571) 272-3841. The examiner can normally be reached on Monday - Thursday, 6:45 a.m. - 4:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

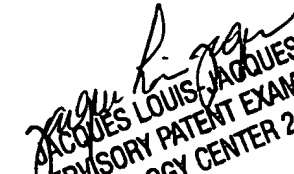
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJS



August 7, 2006

  
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